

# HOUSE . . . . . No. 4018

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House, No. 4018, as substituted by the House, on motion of Messrs. Rodrigues of Westport, Straus of Mattapoisett and Costello of Newburyport, for a Bill relative to security freezes and notification of data breaches (House, No. 4012), as changed by the committee on Bills in the Third Reading and as amended by the House. May 9, 2007.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand and Seven.

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### AN ACT RELATIVE TO THE PROTECTION OF PERSONAL INFORMATION.

1     *Whereas*, The deferred operation of this act would tend to  
2     defeat its purpose, which is forthwith to protect personal informa-  
3     tion of residents of the commonwealth, therefore it is hereby  
4     declared to be an emergency law, necessary for the immediate  
5     preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1     SECTION 1. Chapter 66 of the General Laws, as appearing in the  
2     2004 Official Edition, is hereby amended by inserting after section  
3     8A the following new section:—

4     Section 8B. Records or documents destroyed or disposed of pur-  
5     suant to the provisions of this chapter shall be destroyed or disposed  
6     of in accordance with the provisions of chapter 93J in a manner that  
7     prevents personal data, as defined in section 1 of chapter 66A, from  
8     being practicably read or reconstructed.

1     SECTION 1A. Section 10 of chapter 66 of the General Laws, as  
2     appearing in the 2004 Official Edition is hereby amended by adding  
3     the following paragraph:—

4     (e) Notwithstanding any General or special law, or any rule or  
5     regulation, to the contrary, before any record or document is fur-  
6     nished to the public it shall be redacted by the custodian or holder of  
7     said record or document so that only the last four digits of an indi-  
8     vidual's Social Security number, government-issued driver's license

9 or other identification number contained thereon can practicably be  
10 read. Nothing in this paragraph shall prohibit said custodian from  
11 providing an un-redacted copy of such record or document when  
12 required to do so by any other state or federal law.

1 SECTION 2. Section 1 of chapter 66A of the General Laws, as  
2 appearing in the 2004 Official Edition, is hereby amended by  
3 striking out the definition “Agency” and inserting in place thereof  
4 the following definition:—

5 “Agency”, any county, city, town, or constitutional office or any  
6 agency thereof, including but not limited to, any department, divi-  
7 sion, bureau, board, commission or committee thereof, or any  
8 authority created by the general court to serve a public purpose,  
9 having either statewide or local jurisdiction.

1 SECTION 3. Said section 1 of said chapter 66A of the General  
2 Laws, as so appearing, is hereby amended by striking out the defini-  
3 tion “Personal data” and inserting in place thereof the following def-  
4 inition:—

5 “Personal data”, any information concerning a resident of the  
6 commonwealth which, because of first name or first initial and last  
7 name, identifying number, or description can be readily associated  
8 with a particular individual, including, but not limited to, a social  
9 security number, a government-issued driver’s license or identifica-  
10 tion number, or an account number, credit or debit card number,  
11 which may or may not be in combination with any required security  
12 code, access code, or password that would permit entry to a resi-  
13 dent’s financial account; provided however, that such information  
14 may be redacted, pursuant to paragraph (e) of section 10 of chapter  
15 66, by the custodian or holder of a public record, as defined in  
16 clause Twenty-sixth of section 7 of chapter 4 prior to the dissemina-  
17 tion of any such record; and provided further, that personal data shall  
18 not include intelligence information, evaluative information or crim-  
19 inal offender record information, as defined in section 167 of chapter  
20 6, information available from the sex offender registry, as defined in  
21 section 178C of said chapter 6, or information authorized by state or  
22 federal law or by an individual to be publicly listed, published or  
23 disseminated or to be transferred to a third party.

1     SECTION 4. Subsection (d) of section 2 of said chapter 66A of  
2 the General Laws, as so appearing, is hereby amended by inserting  
3 after the word “fire” in line 32, the words:— “identity theft”

1     SECTION 5. Section 3 of said chapter 66A of the General Laws,  
2 as so appearing, is hereby amended by striking out the last sentence  
3 and inserting in place thereof the following:—  
4     The attorney general, the state secretary, the state treasurer and  
5 the state auditor shall adopt applicable regulations for their respec-  
6 tive departments. The state secretary shall adopt applicable regula-  
7 tions for counties, cities and towns.

1     SECTION 6. Section 50 of chapter 93 of the General Laws, as  
2 appearing in the 2004 Official Edition, is hereby amended by  
3 inserting after the definition of “Firm offer of credit” the following  
4 definition:—  
5     “Identity theft report”, a report alleging identity theft pursuant to  
6 section 37E of chapter 266, 18 U.S.C. 1028, or a similar statute in  
7 any other jurisdiction; or is a copy of an official report filed by a  
8 consumer with an appropriate federal, state or local law enforcement  
9 agency the false filing of which would subject said person to crim-  
10 inal penalties relating to the filing of false information.

1     SECTION 7. Said section 50 of said chapter 93 of the General  
2 Laws, as so appearing, is hereby further amended by inserting after  
3 the definition of “Medical Information” the following definition:—  
4     “Password” or “Personal identification number”, a unique and  
5 random number or combination of numbers and letters; provided,  
6 however, that said number shall not contain a consumer’s social  
7 security number, in whole or in part, or other personal identifying  
8 information.

1     SECTION 8. Said section 50 of said chapter 93 of the General  
2 Laws, as so appearing, is hereby further amended by inserting after  
3 the definition of “Prescreening” the following definitions:—  
4     “Proper identification”, information generally sufficient to iden-  
5 tify a person which shall include, but not be limited to, name,  
6 address, social security number and date of birth.

7 “Security freeze”, a notice placed in a consumer report, at the  
8 written request of a consumer and subject to certain exceptions  
9 which prohibits the consumer reporting agency from releasing the  
10 consumer report, or any information contained therein without the  
11 expressed written authorization of said consumer.

1 SECTION 9. Section 55 of said chapter 93, as so appearing, is  
2 hereby amended by inserting after the word “fifty-one” the  
3 following words:— and chapter 93I

1 SECTION 10. Subsection (b) of section 56 of said chapter 93, as  
2 so appearing, is hereby amended by adding the following:—

3 You have a right to request a “security freeze” on your consumer  
4 report. Said security freeze shall prohibit a consumer reporting  
5 agency from releasing any information in your consumer report  
6 without your expressed written authorization. A security freeze shall  
7 be requested by sending a written request by standard mail or  
8 overnight mail to a consumer reporting agency. The security freeze  
9 is designed to prevent credit, loans, and services from being  
10 approved in your name without your consent. You should be aware  
11 that using a security freeze may delay, interfere with, or prevent the  
12 timely approval of any subsequent request or application you may  
13 make regarding the securing of new loans, credit, mortgage, insur-  
14 ance, government services or payments, rental housing, employ-  
15 ment, and investment, a license, cellular phone approval, utilities,  
16 digital signature, an internet credit card transaction, or other serv-  
17 ices, including an extension of credit at point of sale.

18 Within 5 business days of placing a security freeze on your con-  
19 sumer report, the consumer reporting agency shall provide you with  
20 a personal identification number or password which you may use to  
21 lift the freeze on your consumer report or authorize the release of  
22 your consumer report to a specific party, parties or period of time  
23 after the freeze is in place. In order to lift a freeze pursuant to this  
24 section, you shall request said lift in writing and provide all of the  
25 following:

26 (1) the personal identification number or password provided by  
27 the consumer reporting agency;

28 (2) proper identification to verify your identity; and

29 (3) the proper information regarding the third party or parties who  
30 are to receive the consumer report or the period of time for which  
31 the report shall be available to users of the consumer report.

32 A consumer reporting agency that receives a written request from  
33 a consumer to lift a freeze on a consumer report shall comply with  
34 said written request no later than 3 business days after receiving said  
35 written request.

36 A security freeze shall not apply to a check services or fraud pre-  
37 vention services company, which issues reports on incidents of fraud  
38 or authorizations for the purpose of approving or processing nego-  
39 tiable instruments, electronic funds transfers, or similar methods of  
40 payments or a demand deposit account information service com-  
41 pany, which issues reports regarding account closures due to fraud,  
42 substantial overdrafts, ATM abuse, or similar negative information  
43 regarding a consumer, to inquiring banks or other financial institu-  
44 tions for use only in reviewing a consumer request for a demand  
45 deposit account at the inquiring bank or financial institution or a  
46 consumer reporting agency that acts only as a reseller of credit infor-  
47 mation by assembling and merging information contained in the  
48 database of another consumer reporting agency or multiple con-  
49 sumer reporting agencies, and does not maintain a permanent data-  
50 base of credit information from which new consumer reports are  
51 produced. Nor shall it apply to a person or entity, or to its affiliates,  
52 or collection agencies acting on behalf of the person or entity, with  
53 which you have an existing account that requests information in  
54 your consumer report for the purposes of reviewing or collecting the  
55 account, provided you have previously given your consent to the use  
56 of your consumer report. Reviewing the account includes activities  
57 related to account maintenance, monitoring, credit line increases,  
58 and account upgrades and enhancements.

1 SECTION 11. The General Laws are hereby amended by adding  
2 after chapter 93G the following 3 chapters:—

3

#### **Chapter 93H.**

4

#### **Breaches of Personal Information.**

5 Section 1. As used in this chapter the following words shall,  
6 unless the context clearly requires otherwise, have the following  
7 meanings:

8 “Agency”, any county, city, town, judicial, or constitutional office  
9 or any agency thereof, including but not limited to, any department,  
10 division, bureau, board, commission or committee thereof, or any  
11 authority created by the general court to serve a public purpose,  
12 having either statewide or local jurisdiction.

13 “Breach of security”, the unauthorized acquisition or loss of data  
14 that compromises the security, confidentiality, or integrity of per-  
15 sonal information maintained by an agency or a person. Good faith  
16 acquisition of personal information by an employee or agent of an  
17 agency, or a person for the purposes of the agency or the person,  
18 shall not be considered a breach of security, provided that the per-  
19 sonal information is not used or subject to further unauthorized dis-  
20 closure.

21 “Disposal”, the destruction, abandonment, discard, donation, sale  
22 or transfer of any material containing personal data, including, but  
23 not limited to, paper, electronic equipment or media, or other non-  
24 paper media.

25 “Notice”, written or electronic notice if the notice provided is  
26 consistent with the provisions regarding electronic records and sig-  
27 natures set forth in § 7001 of Title 15 of the United States Code; or  
28 substitute notice, if the agency or person required to provide notice  
29 demonstrates that the cost of providing notice will exceed \$250,000,  
30 or that the affected class of residents of the commonwealth to be  
31 notified exceeds 500,000 residents, or that the agency or person does  
32 not have sufficient contact information to provide notice.

33 “Substitute notice”, an electronic mail notice if the agency or  
34 person has e-mail addresses for the members of the affected class of  
35 residents of the commonwealth; and the conspicuous posting of said  
36 notice on the web site page of the agency or person, if the agency or  
37 person maintains one; and notice to major statewide media.

38 “Person”, a natural person, corporation, association, partnership  
39 or other legal entity. Any person or agency required to provide  
40 notice or substitute notice of a security breach to a consumer shall,  
41 whenever possible, be required to provide legal verifiable evidence  
42 that the notice or substitute notice in the case of electronic mail noti-  
43 fication was in fact sent to the consumer, received by the consumer,  
44 the message content and official time stamp recorded.

45 “Personal information”, means a resident of the commonwealth’s  
46 first name or first initial and last name in combination with any 1 or  
47 more of the following data elements that relate to the resident:

48 a. social security number;

49 b. driver’s license number or Massachusetts identification card  
50 number; or

51 d. account number, or credit or debit card number, with or without  
52 any required security code, access code, personal identification  
53 number or password that would permit access to a resident’s finan-  
54 cial account.

55 Section 2. Any person or agency conducting business in the com-  
56 monwealth and holding, maintaining, owning or licensing data  
57 which includes personal information about a resident of the com-  
58 monwealth which discovers, or should have reasonably been  
59 expected to discover, that said personal information was lost or  
60 acquired by an unauthorized person or used for an unauthorized pur-  
61 pose shall immediately notify said resident, the director of the office  
62 of consumer affairs and business regulation, the commissioner of the  
63 division of banks, the attorney general of the commonwealth and  
64 any consumer reporting agencies identified by the director of the  
65 office of consumer affairs and business regulation. Said notification  
66 shall include, but not be limited to, the nature of the breach and the  
67 numbers of residents of the commonwealth affected by said breach.  
68 Notice shall be made immediately upon discovery and without  
69 unreasonable delay and shall be consistent with the legitimate needs  
70 of law enforcement and with any measures necessary to determine  
71 the scope of the breach and to restore the reasonable integrity of the  
72 electronic or non-electronic data system.

73 An agency or person maintaining data that includes personal  
74 information that the agency or person does not own or license, shall  
75 give notice to, and cooperate with, the owner or licensee of the infor-  
76 mation upon a breach of security immediately following discovery  
77 of said breach, if personal information about a Massachusetts resi-  
78 dent was acquired by an unauthorized person or used for an unautho-  
79 rized purpose. Cooperation shall include sharing with the owner or  
80 licensee information relevant to the breach; provided however, that  
81 such disclosure shall not require the disclosure of confidential busi-  
82 ness information or trade secrets.

83 Notice required pursuant to this chapter shall be delayed upon the  
84 determination of a law enforcement agency that said notice would  
85 impede a criminal investigation; provided, however, that said law  
86 enforcement agency shall notify the attorney general of the com-  
87 monwealth in writing of the delay of notification. Notice required by  
88 this chapter shall be made in good faith, without unreasonable delay  
89 within 21 days of the law enforcement agency determining that noti-  
90 fication will no longer impede the investigation.

91 Section 3. This chapter does not relieve an agency or person from  
92 the duty to comply with requirements of any applicable general or  
93 special law or federal law regarding the protection and privacy of  
94 personal information; provided however, an agency or person that is  
95 regulated by federal law and that maintains procedures for a breach  
96 of security pursuant to the laws, rules, regulations, guidance, or  
97 guidelines established by its primary or functional federal regulator  
98 is deemed to be in compliance with this chapter if the agency or  
99 person notifies said Massachusetts resident, the director of the office  
100 of consumer affairs and business regulation, the commissioner of the  
101 division of banks, the attorney general of the commonwealth and  
102 any consumer reporting agencies identified by the director of the  
103 office of consumer affairs and business regulation, in accordance  
104 with the maintained and required procedures when a breach occurs.  
105 Notification shall include, but not be limited to, the nature of the  
106 breach, the number of residents of the commonwealth affected by  
107 said breach, the process by which a resident may take to place a  
108 security freeze on their consumer report including the consumer's  
109 right to obtain a police report, the method of how a request shall be  
110 placed, the address for each major consumer reporting agency, the  
111 information that shall be contained in a security freeze request, and  
112 any fees that shall be paid to any of the consumer reporting agencies,  
113 provided however that said notification to said resident shall not  
114 include the nature of the breach and the number of residents of the  
115 commonwealth affected by said breach. This section shall be sub-  
116 ject to the regulatory authority of the director of the office of con-  
117 sumer affairs.

118 Section 4. The superior court department of the trial court shall  
119 have jurisdiction to consider any claim brought pursuant to this  
120 chapter. The attorney general of the commonwealth may bring an  
121 action in law or equity to address violations of this chapter and for



122 other relief that may be appropriate to ensure proper compliance  
123 with this chapter or to recover direct economic damages resulting  
124 from a violation, or both. The provisions of this chapter are not  
125 exclusive and do not relieve an agency or a person subject to this  
126 chapter from compliance with or remedies available with all other  
127 applicable provisions of law.

128 Failure by a person to comply with the provisions of this chapter  
129 shall constitute an unfair or deceptive act or practice pursuant to  
130 chapter 93A; provided, however, that receipt of an official order by a  
131 law enforcement agency to delay notification as otherwise required  
132 by this chapter shall constitute an affirmative defense.

133 Section 5. Notwithstanding any general or special law to the con-  
134 trary, the director of the office of consumer affairs and business reg-  
135 ulation, in consultation with the secretary of housing and economic  
136 development, shall promulgate rules and regulations pursuant to this  
137 chapter including, but not limited to, the method of notice and sub-  
138 stitute notice

139

**Chapter 93I.**

140

**Security Freezes.**

141 Section 1. As used in this chapter the following words shall,  
142 unless the context clearly requires otherwise, have the following  
143 meanings:—

144 “Consumer report”, any written, oral or other communication of  
145 any information by a consumer reporting agency bearing on a con-  
146 sumer’s credit worthiness, credit standing or credit capacity which is  
147 used or expected to be used or collected in whole or in part for the  
148 purpose of serving as a factor in establishing the consumer’s eligi-  
149 bility for (1) credit or insurance to be used primarily for personal,  
150 family, or household purposes, or (2) employment purposes, or (3)  
151 other purposes authorized under section 51 of chapter 93. The term  
152 does not include any report containing information solely as to trans-  
153 actions or experiences between the consumer and the person making  
154 the report, any authorization or approval of a specific extension of  
155 credit directly or indirectly by the issuer of a credit card or similar  
156 device, or any report in which a person who has been requested by a  
157 third party to make a specific extension of credit directly or indi-  
158 rectly to a consumer conveys his decision with respect to such

159 request, if the third party advises the consumer of the name and  
160 address of the person to whom the request was made and such  
161 person makes the disclosures to the consumer required under section  
162 62 of chapter 93.

163 “Consumer reporting agency”, means any person which, for mon-  
164 etary fees, dues, or on a cooperative nonprofit basis, regularly  
165 engages in whole or in part in the practice of assembling or evalu-  
166 ating consumer credit information or other information on con-  
167 sumers for the purpose of furnishing consumer reports to third  
168 parties.

169 “Lift”, a release of an individual’s consumer report to a specific  
170 party or for a temporary period of time stated by the consumer while  
171 a security freeze is in effect.

172 “Person”, a natural person, corporation, association, partnership  
173 or other legal entity.

174 “Proper identification”, information generally sufficient to iden-  
175 tify a person which shall include, but not be limited to, name,  
176 address, social security number and date of birth.

177 “Remove”, to permanently terminate a security freeze.

178 “Security freeze”, a notice placed in a consumer report at the  
179 request of the consumer and subject to certain exceptions which pro-  
180 hibits the consumer reporting agency from releasing the consumer  
181 report or any information derived from it without the expressed  
182 written authorization of the consumer.

183 Section 2. A consumer may request in writing that a security  
184 freeze be placed on his or her consumer report by sending said  
185 request by standard mail or overnight mail or as authorized by regu-  
186 lation to a consumer reporting agency at an address designated by  
187 the consumer reporting agency to receive such requests. A consumer  
188 reporting agency shall place a security freeze on a consumer report  
189 no later than 3 business days after receipt of said written request  
190 from a consumer. If a security freeze is in place, information from a  
191 consumer report shall not be released to a third party without prior  
192 written authorization of the consumer. Nothing in this section shall  
193 prevent a consumer reporting agency from advising a third party that  
194 a security freeze is in effect with respect to a consumer report.

195 A consumer reporting agency shall send a written confirmation of  
196 the security freeze to a consumer within 5 business days after the  
197 security freeze goes into effect and shall provide the consumer with

198 a unique personal identification number or password to be used by  
199 the consumer when providing authorization for the release of his or  
200 her consumer report for a specific party or period of time.

201 If a consumer wishes to allow his or her consumer report to be  
202 accessed for a specific party or period of time while a freeze is in  
203 place, said consumer shall contact the consumer reporting agency by  
204 standard mail or overnight mail or as authorized by regulation and  
205 request that the freeze be lifted, and provide proper identification,  
206 the unique personal identification number or password provided by  
207 the consumer reporting agency, and proper information regarding the  
208 third party who is to receive the consumer report or the time period  
209 for which the report shall be available to users of the consumer  
210 report.

211 A consumer reporting agency receiving a written request from a  
212 consumer to lift or remove a freeze on a consumer report pursuant to  
213 this chapter, shall comply with the request no later than 3 business  
214 days after receiving the request; provided, however, that a consumer  
215 reporting agency shall only remove a freeze placed on a consumer  
216 report if the consumer requests it or if the consumer report was  
217 frozen due to a material misrepresentation of fact by the consumer. If  
218 a consumer reporting agency intends to remove a freeze upon a con-  
219 sumer report due to a material misrepresentation of fact by the con-  
220 sumer, then the consumer reporting agency shall notify the consumer  
221 in writing prior to removing the freeze on the consumer report.

222 If a third party requests access to a consumer report on which a  
223 security freeze is in effect, and this request is in connection with an  
224 application for credit or any other use, and the consumer does not  
225 allow his or her consumer report to be accessed for that specific  
226 party or period of time, the third party may treat the application as  
227 incomplete.

228 If a consumer requests a security freeze, the consumer reporting  
229 agency shall disclose the process of placing, lifting and removing a  
230 freeze.

231 The provisions of this chapter shall not apply to the use of a con-  
232 sumer report by any of the following:

233 (a) a person or entity, or a subsidiary, affiliate, or agent of that  
234 person or entity, or an assignee of a financial obligation owing by  
235 the consumer to that person or entity, or a prospective assignee of a  
236 financial obligation owing by the consumer to that person or entity

237 in conjunction with the proposed purchase of the financial obliga-  
238 tion, with which the consumer has or had prior to assignment an  
239 account or contract, including a demand deposit account, or to whom  
240 the consumer issued a negotiable instrument, for the purposes of  
241 reviewing the account or collecting the financial obligation owing  
242 for the account, contract, or negotiable instrument. For purposes of  
243 this paragraph, “reviewing the account” shall include activities  
244 related to account maintenance, monitoring, credit line increases,  
245 and account upgrades and enhancements; a subsidiary, affiliate,  
246 agent, assignee, or prospective assignee of a person to whom access  
247 has been granted for purposes of facilitating the extension of credit  
248 or other permissible use;

249 (b) any state or local agency, law enforcement agency, trial court,  
250 or private collection agency acting pursuant to a court order, war-  
251 rant, or subpoena;

252 (c) a Massachusetts child support agency or Title IV-D of the  
253 Social Security Act (42 U.S.C. et seq.);

254 (d) the Massachusetts division of medical assistance or its agents  
255 or assigns acting to investigate medicaid or medicare fraud;

256 (e) the department of revenue or its agents or assigns acting to  
257 investigate or collect delinquent taxes or unpaid court orders or to  
258 fulfill any of its other statutory responsibilities;

259 (f) the use of credit information for the purposes of prescreening  
260 as provided for by the federal Fair Credit Reporting Act, 15 U.S.C. §  
261 1681;

262 (g) any person or entity administering a credit file monitoring  
263 subscription service to which the consumer has subscribed; or

264 (h) any person or entity for the purpose of providing a consumer  
265 with a copy of his or her consumer report upon the consumer’s  
266 request.

267 Section 3. Nothing in this chapter shall prevent a consumer  
268 reporting agency from charging a reasonable fee, not to exceed \$5,  
269 to a consumer who elects to freeze, lift or remove a freeze to a con-  
270 sumer report, except that a consumer reporting agency shall not  
271 charge a fee to a victim of identity theft or his spouse, provided that  
272 the victim has submitted a valid police report to the consumer  
273 reporting agency.

274 Section 4. A check services or fraud prevention services com-  
275 pany, which issues reports on incidents of fraud or authorizations for

276 the purpose of approving or processing negotiable instruments, elec-  
277 tronic funds transfers, or similar methods of payments or a demand  
278 deposit account information service company, which issues reports  
279 regarding account closures due to fraud, substantial overdrafts, ATM  
280 abuse, or similar negative information regarding a consumer, to  
281 inquiring banks or other financial institutions for use only in  
282 reviewing a consumer request for a demand deposit account at the  
283 inquiring bank or financial institution or a consumer reporting  
284 agency that acts only as a reseller of credit information by assem-  
285 bling and merging information contained in the database of another  
286 consumer reporting agency or multiple consumer reporting agencies,  
287 and does not maintain a permanent database of credit information  
288 from which new consumer reports are produced shall not be required  
289 to place a security freeze on a consumer report.

290 Section 5. Notwithstanding any general or special law to the con-  
291 trary, the director of the office of consumer affairs and business reg-  
292 ulation, in consultation with the secretary of housing and economic  
293 development, shall promulgate rules and regulations pursuant to this  
294 chapter including, but not limited to, the fees to be charged, and the  
295 method for requesting security freezes and the lifting or removing  
296 thereof.

#### Chapter 93J.

#### Disposition and Destruction of Records.

299 Section 1. As used in this chapter the following words shall,  
300 unless the context clearly requires otherwise, have the following  
301 meanings:

302 “Agency”, any county, city, town, judicial, or constitutional office  
303 or any agency thereof, including but not limited to, any department,  
304 division, bureau, board, commission or committee thereof, or any  
305 authority created by the general court to serve a public purpose,  
306 having either statewide or local jurisdiction.

307 “Data subject”, an individual to whom personal information  
308 refers.

309 “Person”, a natural person, corporation, association, partnership  
310 or other legal entity.

311 “Personal information”, a resident of the commonwealth’s first  
312 name or first initial or last name in combination with any 1 or more  
313 of the following data elements that relate to the resident:

314 a. social security number;

315 b. driver’s license number or Massachusetts identification card  
316 number; or

317 d. account number, or credit or debit card number, with or without  
318 any required security code, access code, personal identification  
319 number or password that would permit access to a resident’s finan-  
320 cial account.

321 Section 2. When disposing of records, each agency or person shall  
322 meet the following minimum standards for proper disposal of  
323 records containing personal information:

324 (a) paper documents containing personal information shall be  
325 either redacted, burned, pulverized or shredded so that personal data  
326 cannot practicably be read or reconstructed;

327 (b) electronic media and other non-paper media containing per-  
328 sonal information shall be destroyed or erased so that personal infor-  
329 mation cannot practicably be read or reconstructed.

330 Each agency or person disposing of personal information, after  
331 due diligence, may contract with a third party to dispose of personal  
332 information in accordance with this chapter. Any third party explic-  
333 itly hired to dispose of material containing personal information  
334 shall implement and monitor compliance with policies and proce-  
335 dures that protect against unauthorized access to or acquisition of or  
336 use of personal information during the collection, transportation and  
337 disposal of personal information.

338 Any agency or person who violates the provisions of this chapter  
339 shall be subject to a civil fine of \$100 per data subject affected, pro-  
340 vided said fine shall not exceed \$50,000 for each instance of  
341 improper disposal.

342 Section 3. An agency or person that conducts business in the com-  
343 monwealth and owns or licenses data that includes personal informa-  
344 tion about a resident of the commonwealth shall take reasonable  
345 measures to protect against a breach of security. Such reasonable  
346 measures shall include, but may not be limited to:—

347 (a) implementing and monitoring compliance with policies and  
348 procedures designed to protect personal data from unauthorized  
349 access, acquisition or use;

350 (b) implementing and monitoring compliance with disposal poli-  
351 cies and procedures that require the burning, pulverizing or shred-  
352 ding of papers containing personal data so that the personal data  
353 cannot practicably be read or reconstructed;

354 (c) implementing and monitoring compliance with disposal poli-  
355 cies and procedures that require the destruction or erasure of elec-  
356 tronic media and other non-paper media containing personal data so  
357 that the personal data cannot practicably be read or reconstructed;

358 (d) performing due diligence when contracting with a third party  
359 to dispose of papers or electronic or other non-paper media con-  
360 taining personal data. Due diligence shall include, but shall not be  
361 limited to: reviewing an independent audit of the third party's oper-  
362 ations and its compliance with this statute and industry standards;  
363 obtaining information about the third party from several references  
364 or other reliable sources; requiring that the third party be certified by  
365 a recognized trade association or similar organization with a reputa-  
366 tion for high standards of quality; and

367 (e) reviewing and evaluating the third party's security policies or  
368 procedures, and taking other appropriate measures to determine the  
369 competency and integrity of the third party.

370 Section 4. The superior court department of the trial court shall  
371 have jurisdiction to consider any claim brought pursuant to this  
372 chapter. The attorney general of the commonwealth may bring an  
373 action in law or equity to address violations of this chapter and for  
374 other relief that may be appropriate to ensure proper compliance  
375 with this chapter or to recover direct economic damages resulting  
376 from a violation, or both. The provisions of this chapter are not  
377 exclusive and do not relieve an agency or person subject to this  
378 chapter from compliance with or remedies available with all other  
379 applicable provisions of law.

380 Failure by a person to comply with the provisions of this chapter  
381 shall constitute an unfair or deceptive act or practice pursuant to  
382 chapter 93A.

383 Section 5. Notwithstanding any general or special law to the con-  
384 trary, the director of the office of consumer affairs and business reg-  
385 ulation, in consultation with the secretary of housing and economic

386 development, shall promulgate rules and regulations pursuant to this  
387 chapter.

1 SECTION 12. Section 37E of chapter 266 of the General Laws,  
2 as appearing in the 2004 Official Edition, is hereby amended by  
3 adding the following paragraph:—

4 (f) A law enforcement officer shall accept a police incident report  
5 from a victim and shall return a copy, if requested, within 24 hours.

1 SECTION 13. The director of the office of consumer affairs and  
2 business regulation shall, within 6 months of the effective date of  
3 this act, file a report with the house and senate chairs of the joint  
4 committee on consumer protection and professional licensure, out-  
5 lining recommendations of methods to expedite the process by  
6 which consumers and consumer reporting agencies may place, lift or  
7 remove a security freeze pursuant to this act.

1 SECTION 14. This act shall take effect upon its passage.

1 SECTION 15. There shall be a special commission to investigate,  
2 study and make legislative recommendations on the impact of finan-  
3 cial losses to financial institutions in relation to data breaches by pri-  
4 vate entities. The commission shall consist of 12 members, 1 of  
5 whom shall be appointed by the governor who shall serve as co-  
6 chairman of the commission; 3 members of the senate appointed by  
7 the President, 1 of whom shall serve as co-chairman of the commis-  
8 sion and 1 of whom shall be appointed by the minority leader; 3  
9 members of the house of representatives appointed by the Speaker, 1  
10 of whom shall serve as co-chairman of the commission and 1 of  
11 whom shall be appointed by the minority leader; the commissioner  
12 of the office of consumer affairs or their representative; the director  
13 of the division of banks or their representative; a member of the  
14 Massachusetts Bankers Association; a member of the Massachusetts  
15 Credit Union League; a member of the Massachusetts Retailers  
16 Association. The commission shall file a report on the results of its  
17 study, together with its recommendations, if any, and drafts of legis-  
18 lation necessary to carry such recommendations into effect, with the  
19 clerks of the house of representatives and the senate not later than  
20 December 31, 2007.